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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173474
Party	Defendant 3RND 3RND 5801 Brentwood PI Fontana, CA 92336
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Date	11/29/2006
Attachments	3RND Answer to Notice of Opposition.pdf (4 pages)(36447 bytes) 3RND - Answer to Notice of Opposition Exhibits.pdf (6 pages)(3653296 bytes) Answer to Notice of Opposition Proof of Service.pdf (1 page)(12388 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:	78671250)	
For the Mark:	INJUSTICE)	
Filed:	July 15, 2005)	
Published in the Trademark)	
Official Gazette on:	August 22, 2006)	Opposition No. 91173474
)	
)	
TWEEN BRANDS INVESTMENT, LLC)	
AN OHIO LIMITED LIABILITY COMPANY)	
)	
	Opposer,)	
)	
	v.)	
)	
3RND)	
Rickey Hayes II, USA)	
Karen Hayes II, USA)	
Rickey Hodges USA)	
PARTNERSHIP CALIFORNIA (as listed))	
)	
	Applicant,)	
)	

ANSWER TO NOTICE OF OPPOSITION

Applicant 3RND, Rickey Hayes II, USA, Karen Hayes II, USA, Rickey Hodges, USA, a California Partnership with a place of business at 5801 Brentwood Pl., Fontana, California, 92336, by their undersigned attorney, hereby answers the Opposition to Registration of Tween Brands investment, LLC and admits, denies, and alleges as follows:

1. In response to the first paragraph of the Notice of Opposition, Applicant admits that Opposer is the record owner of the Registered Trademark Justice under the Registration No. 2990417 for the International Class 025.

2. With respect to the allegations of the second paragraph, Applicant admits that Opposer filed an application for federal registration for the Registered Mark on August 22, 2003 and that on

December 28, 2004, it was issued as Registration No. 2990417. Applicant denies the remaining allegations as it is without sufficient information to admit or deny the date of first use of Opposer's Mark and, therefore, denies the same.

3. In response to the third paragraph of the Notice of Opposition, Applicant is without knowledge or sufficient information to form a belief as to the Opposer's allegations concerning its Mark, the quality of its products, its goodwill or its great expense, and, therefore, denies those allegations.

4. With respect to the allegations of the fourth paragraph of the Notice of Opposition, Applicant denies that any likelihood of confusion could be found between Opposer's Mark and Applicant's Mark. The respective marks are complete opposites, and therefore, not likely to be confused. Moreover, Applicant's products are for a completely different segment of the purchasing public than are the products sold by Opposer. No reasonable person would be confused between the goods of Applicant and the goods of Opposer. Applicant further denies that Opposer's first use is prior to Applicant's first use, as Applicant is without sufficient knowledge with respect to Opposer's claimed date of first use. Applicant admits that its Mark is used with clothing, namely, "Shirts, Pants, Jackets, Shoes" but denies any further allegations in the fourth paragraph.

5. With respect to the fifth paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged in any way whatsoever by the Registration of Applicant's Trademark. Applicant also denies each of the other allegations of the fifth paragraph and its five subparts, as follows:

a) Applicant denies that Applicant's Mark could cause any likelihood of confusion, any mistake, deceive, or cause any loss of sales to Opposer's Mark;

b) Applicant denies that its Mark "is substantially similar in sight and used in connection with identical goods as Opposer's Registered Mark". Applicant further denies that its Mark would suggest any connection with Opposer or injure in any manner Opposer's reputation. Applicant is offended by the statement that "registration of the applied-for mark may disparage and falsely suggest a connection with Opposer and injure Opposer's reputation". That is precisely the sort of racist prejudice that Applicant's products are created to combat. It is appalling that a Member of the Bar has the audacity

to make such a hateful statement in writing before the TTAB;

c) Applicant denies that the Registration of its Trademark would interfere in any manner with Opposer in the conduct of Opposer's business;

d) Applicant admits that "a registration on the Principal Register constitutes prima facie evidence of an exclusive right to exclude others" but denies that the Registration of Opposer's Trademark could exclude Applicant's use of its Trademark and further denies that Applicant's Registration of its Trademark could exclude Opposer's use of its Trademark, as those two trademarks are completely different, and not likely to cause any confusion to the public;

e) Applicant denies that any dilution could be caused in any manner by Registration of Applicant's Trademark, and therefore Applicant further denies there would be any loss of goodwill to Opposer based upon Registration of Applicant's Trademark.

AFFIRMATIVE DEFENSES

1. Applicant's Trademark "INJUSTICE" cannot be found confusingly similar to Opposer's Mark "JUSTICE" as they are two completely different trademarks, literally the opposite of one another.

2. Applicant's and Opposer's Trademarks are dissimilar in appearance, sound, connotation, denotation, and commercial impression. *See In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. (BNA) 563 (C.C.P.A. 1973). Applicant's Trademark adds the prefix "in" meaning "not" to "justice". Doing so completely changes the meaning of the word from a positive to a negative. Opposer's Mark "Justice" conveys a positive idea; one that is light and airy. Opposer's Mark is used mostly related to girly clothes. *See* the specimens attached to Opposer's Registration showing a girly top and a picture of their store named "Justice just for girls" and the predominance of the color pink (attached hereto as Exhibit A). On the contrary, Applicant's Mark "Injustice" conveys a more negative feeling, a controversial, and ideological connotation. In fact, Applicant's goods are more like street wear conveying strong messages regarding people who live day by day injustices due to their race, the color of their skin,

and more generally, the way that they look. *See* Exhibit B attached hereto showing specimens of Applicant's goods. The completely different commercial impression created by each Party's Trademark means that consumer confusion simply is not at all likely to occur. Even if the words were not complete opposites, they create such a different commercial impression that they are not likely to cause confusion (*see Smith v. Tobacco By-Products & Chemical Corp.*, 243 F.2d 188, 113 U.S.P.Q. (BNA) 339 (C.C.P.A. 1957) where GREEN LEAF for plant sprays suggests that use of the product makes leaves green and has not been found similar to BLACK LEAF for plant sprays that indicates a meaning just the contrary).

3. Opposer's Mark and Applicant's Mark target completely different consumers. Opposer's consumers are little girls and girly teenagers while Applicant targets young ethnic adults. Opposer's goods typically are offered in Opposer's own stores named "Justice just for girls" (*See* Exhibit A) or perhaps in specialty stores dedicated to children and teenagers, primarily females. Quite the opposite, Applicant's goods are sold at music concerts, sporting events, flea markets, and, eventually, will be sold in stores that specialize in street wear or sport wear, primarily for adults and older teenagers, primarily male, and almost exclusively, people of color. Therefore, Opposer's and Applicant's Marks do, in fact, get sold in totally different channels of trade.

WHEREFORE, Applicant respectfully requests that this Opposition to Registration be Dismissed with Prejudice and that United States Trademark Serial No. 78/671250 be permitted to proceed to Registration as a valid Trademark on the Principal Register.

Respectfully Submitted,

HANKIN PATENT LAW,
A Professional Corporation

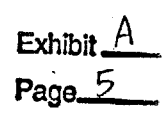
/Marc E. Hankin/

Dated: November 29, 2006

By: _____

Marc E. Hankin
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EXHIBIT A



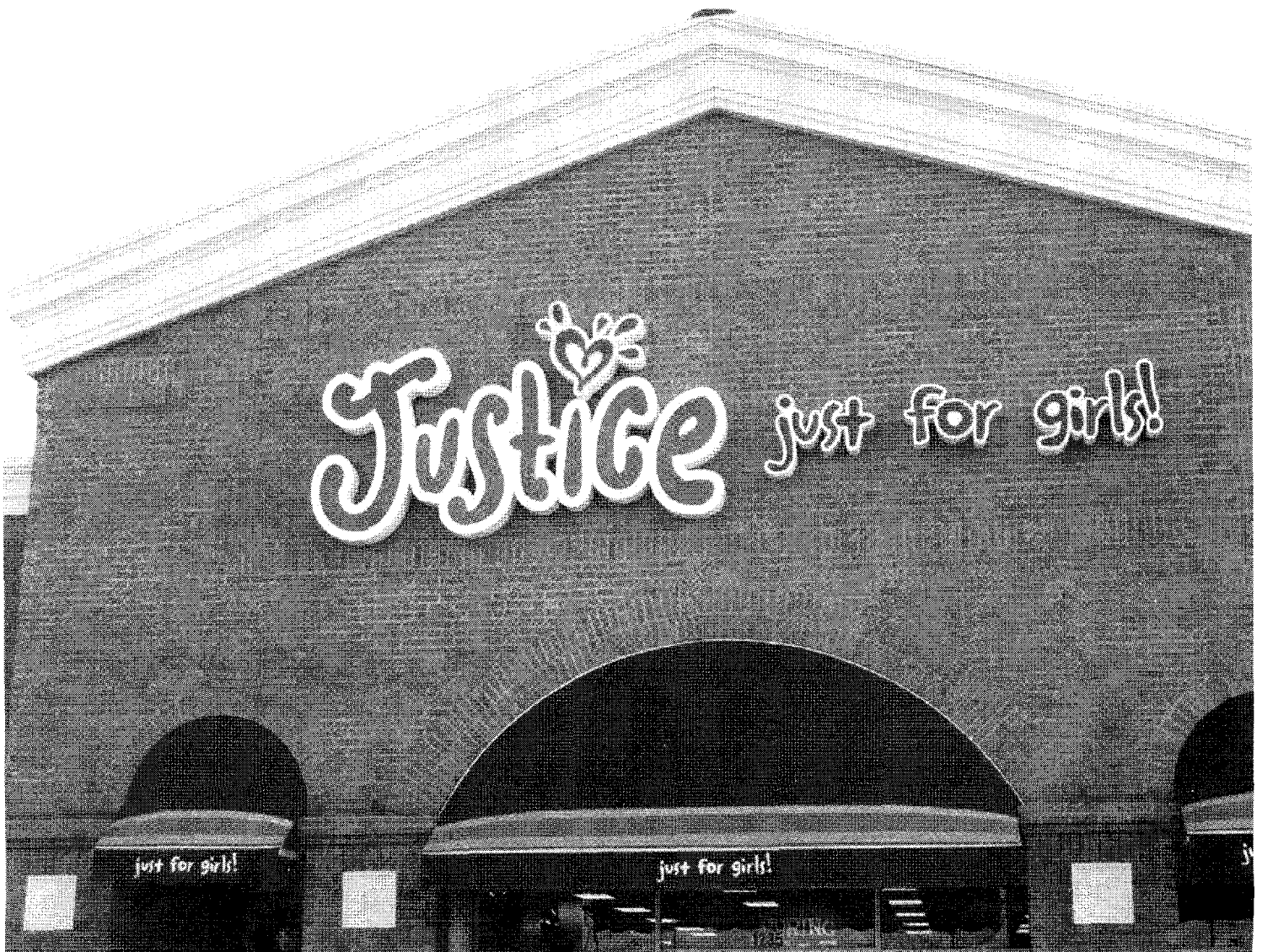


EXHIBIT B

INJUSTICE

U.S.A

PLEASE DON'T PANIC
"YES" I'M HISPANIC

WWW.INJUSTICE.COM

www.INJUSTICE1.com



INJUSTICE
USA

CERTIFICATE OF SERVICE

I am employed in the Law Office of a Member of the Bar of California, I am not a Party in the Action, I am over the age of 18, and I hereby certify that I caused to be served on Attorney for Opposer a true and correct copy of the foregoing document:

ANSWER TO NOTICE OF OPPOSITION

by U.S. Mail, First Class postage prepaid, in an envelope addressed to:

Melanie Martin-Jones
Porter Wright Morris & Arthur, LLC
41 S High St
Columbus, OH 43215

I declare under the penalties of perjury of the United States that the foregoing is true and correct. Executed on November 29, 2006 at West Hollywood, California.

/Grace Pak/
Grace Pak